

Application No.	Applicant(s)		
09/748,412	ROORDA, WOUTER E.		
Examiner	Art Unit		
Hieu Phan	3738		

SEARCHED				
Subclass	Date	Examiner		
1.4,1.42	03/31/04	R		
	Subclass	Subclass Date		

SEARCH NOTES (INCLUDING SEARCH STRATEGY)				
	DA	гЕ	EXMR	

THE KROGER CO.,

Defendant.

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

Pending before the Court is Defendant The Kroger Co.'s ("Kroger") Motion to Dismiss (Doc. 12) Plaintiff Anthony Womick's Complaint (Doc. 1-1). For the reasons set forth below, Defendants' Motion to Dismiss is granted in part and denied in part.

BACKGROUND

Womick alleges that Kroger manufactures, packages, advertises, distributes, and sells various types of ground coffee under its own private label brand in canisters. (Doc. 1-1, p. 5). Kroger represents the number of cups that can be made depends on the size of the canisters:

- The 11.5-ounce (326 g.) canisters represent they can make about 90 cups.
- The 24-ounce (680 g.) canister represent they can make about 185 cups.
- The 25-ounce (708 g.) canisters represent they can make about 195 cups.
- The 29-ounce (822 g.) canisters represent they can make about 225 cups.
- The 30.5-ounce (864 g.) canisters represent they can make about 235 cups.